

STORAGE NAME: h2407s1z.bpr

DATE: May 9, 1996

**\*\*FAILED TO PASS THE LEGISLATURE\*\*****AND FINALLY THE FLORIDA****\*\*SEE FINAL ACTION SECTION\*\***

**HOUSE OF REPRESENTATIVES  
COMMITTEE ON  
BUSINESS AND PROFESSIONAL REGULATION  
FINAL BILL ANALYSIS & ECONOMIC IMPACT STATEMENT**

BILL #: CS/HB 2407

RELATING TO: Department of Business and Professional Regulation

SPONSOR(S): Committee on Business and Professional Regulation and Representative D. Saunders

STATUTE(S) AFFECTED: Chapters 11, 20, 402, 455, 468, 469, 470, 472, 474, 475, 476, 480, 481, 484, 489, and 721, F.S.

COMPANION BILL(S): SB 2372(s), CS/1st ENG/HB 711(c), 1st ENG/HB 785(c), CS 2nd ENG/HB 793 (c), CS/HB 1045(c), CS/1st ENG/HB 1363(c)

**ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:**

- (1) BUSINESS AND PROFESSIONAL REGULATION YEAS 15 NAYS 2
- (2) FINANCE AND TAXATION W/D
- (3) APPROPRIATIONS
- (4)

**I. SUMMARY:**

This bill reorganizes regulation under the Department of Business and Professional Regulation (DBPR). On January 9, 1996, the Secretary of the DBPR released a report entitled, "Program Review, Analysis and Recommendations" which included the efforts of the department to "address some fundamental questions about its mission of regulating professions and industries in the State of Florida, and prepare a strategic plan for the future." It was stated that the goal of the review was to "make recommendations which would facilitate efficient, appropriate, and cost-effective regulation of the businesses and professions currently regulated by DBPR."

The report recommended "deregulation" of: Auctioneers; Interior Designers; Landscape Architects; Talent Agencies; Yacht and Ship Brokers; Health Care Service Pools; Timeshare Solicitors; and most profession's Continuing Education programs.

The report recommended the "transfer" of the following regulatory programs : Athletic Trainers, Massage, and Hearing Aid Specialists to the Agency for Health Care Administration (AHCA); and Water and Wastewater Operators to the Department of Environmental Protection (DEP).

The report recommended establishing a "sunset" (a comprehensive review, followed by an automatic repeal date, unless re-enacted) of the following professions: Athlete Agents; Barbers and Cosmetologists; Construction; and Professional Geologists.

CS/HB 2407 establishes deregulation of Auctioneers, Health Care Service Pools, Timeshare Solicitors, and most profession's Continuing Education programs. Sunset dates for the professions the report had recommended for deregulation (Interior Designers; Landscape Architects; and Talent Agencies) were established, in conformity to CS/HB 1045 which sets all professions under DBPR for a sunset review and possible repeal date.

CS/HB 2407 died in the House Committee on Appropriations.

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## II. SUBSTANTIVE ANALYSIS:

### A. PRESENT SITUATION:

The Department of Business and Professional Regulation (DBPR) was established in 1993 (ch. 93-220, Laws of Florida) with the merger of the Departments of Business Regulation and Professional Regulation. The mission of this newly-created department is to protect the health, safety, and welfare of Florida's consumers by ensuring that regulated businesses and professions meet prescribed standards of education, competency and practice. The department enforces compliance with various regulations and registers certain professionals who successfully complete the examination and licensure requirements of the department.

Section 20.165, F.S., establishes the following divisions within the DBPR: Administration; Alcoholic Beverages and Tobacco; Certified Public Accounting; Florida Land Sales, Condominiums, and Mobile Homes; Hotels and Restaurants; Pari-mutuel Wagering; Professions; Real Estate; Regulation; and Technology, Licensure, and Testing. Section 20.42, F.S., establishes the Agency for Health Care Administration (AHCA) within the DBPR. Although AHCA is statutorily-created within the department, it functions as a separate, autonomous entity. Also, within the DBPR is the State Athletic Commission.

Prior to the merger of the departments, all professions (medical and non-medical) were regulated by the Department of Professional Regulation. The 1992 Legislature authorized the transfer of all medical boards and professions within the Division of Medical Quality Assurance from the DBPR to AHCA, effective July 1, 1993 (ch. 92-149, L.O.F.); however, the 1993 Legislature delayed the transfer until July 1, 1994. Presently, the DBPR has regulatory authority of 28 professions non-medical professionals, 18 boards, two councils, and five professions administered directly by the department. The AHCA administers regulatory control of 29 medical professions, 16 boards, five councils, and five professions administered directly by the agency.

The department operates with an estimated budget in FY 1995-96 of \$152.8 million and 1,867 employees. The Division of Professions which examines and licenses the estimated 1.2 million licensees of certain professions, monitors compliance with existing business standards, and protects the consumer and the ethical licensee through the enforcement of regulations and registration has a budget of \$45.8 million and 644 employees. All of the activities within the department are supported by fees, fines, and taxes collected from the licensees and 7.3% of all those dollars collected are contributed to General Revenue.

In the Summary of the Governor's Budget Recommendations for FY 1996-97, the Governor stated, "The department will concentrate on regulation that is necessary to ensure the health, safety, and welfare of the public. Therefore, certain professions and businesses that are not a danger to the public will be deregulated to enable the department to focus resources on vital state concerns." The Governor identified deregulation of the same list of professions recommended by the DBPR, in addition to the transferral of the same professions selected. The closure and sale of the Orlando Regional Service Center was also recommended by the Governor. The Governor's Budget Recommendations for the DBPR for FY 1996-97 provide 1,701 full-time positions and a total budget of \$148.4 million, a 2.9% reduction from FY 1995-96.

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During the last two fiscal years, the Chairman of the Senate Ways and Means Committee has directed each state agency to conduct a "25% program review." In response to this year's request, the DBPR conducted a complete review of every activity within the agency and submitted recommendations consisting of the elimination of programs which the department ranked as the lowest in priority. The "25% budget reduction plan" identified, in priority order, 35 programs to be cut at a savings of \$22.7 million. The first 13 of those programs were within the purview of the Business and Professional Regulation Committee.

On January 9, 1996, the Secretary of the DBPR released a report to the Governor entitled, "Program Review, Analysis and Recommendations" which included the efforts of the department to "take stock, address some fundamental questions about its mission of regulating professions and industries in the State of Florida, and prepare a strategic plan for the future." It was stated that the goal of the review was to "make recommendations which would facilitate efficient, appropriate, and cost-effective regulation of the businesses and professions currently regulated by DBPR."

Pursuant to s. 455.204, F.S., senior management staff at the DBPR conducted a comprehensive review of the department and its activities for the purpose of developing and implementing a long-range policy and planning process. In conducting the review, the following evaluation points were evaluated:

- \* Whether DBPR, including the various functions performed, is operating efficiently and effectively.
- \* How and why the various professions and businesses are regulated.
- \* Whether there is a need to continue regulation, and to what degree.
- \* Whether or not consumer protection is adequate, and how it can be improved.
- \* Whether there is consistency between the various practice acts.
- \* Whether unlicensed activity is adequately enforced.

The review recommended the following programs and activities to be deregulated:

Auctioneers;  
Interior Designers;  
Landscape Architects;  
Talent Agencies;  
Yacht and Ship Brokers;  
Health Care Service Pools;  
Timeshare Solicitors;  
Continuing Education programs; and  
Continuing Education program for the Division of Real Estate.

Also recommended was the transfer of the following regulatory programs and activities:

Athletic Trainers to the Agency for Health Care Administration (AHCA);  
Board of Massage to AHCA;  
Board of Hearing Aid Specialists to AHCA; and  
Water and Wastewater Operators to the Department of Environmental Protection.

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Finally, the report recommended establishing a sunset (a comprehensive review, followed by an automatic repeal date, unless reenacted) of the following professions and activities to determine if modifications are necessary to approve the effectiveness and efficiency of the regulation:

Athlete Agents;  
Barbers and Cosmetologists;  
Construction (Construction Industry Licensing Board, Electrical Contractors' Licensing Board, Building Code Administrators and Inspectors Board, and Asbestos Consultants/Contractors); and  
Professional Geologists.

**B. EFFECT OF PROPOSED CHANGES:**

This bill reorganizes the Department of Business and Professional Regulation and its authority to regulate the professions and occupations for which it has oversight responsibility. It deregulates auctioneers, health care service pools, and timeshare solicitors. It establishes an automatic repeal date for all professions under DBPR, with a required formal review and possible modification or reenactment to take place prior to that date. It transfers the following regulatory programs to the Agency for Health Care Administration (AHCA): Athletic Trainers, Massage, and Hearing Aid Specialists; and transfers the regulation of Water and Wastewater Operators to the Department of Environmental Protection (DEP). It eliminates most profession's continuing education requirements.

**C. SECTION-BY-SECTION ANALYSIS:**

Section 1. Amends s. 20.165, F.S., relating to the organization of the Department of Business and Professional Regulation, to conform the list of boards within the Division of Professions to the repeal and transfer of professions in the bill, to change the name of the Division of Regulation to the Division of Enforcement, and to delete references to the Division of Medical Quality Assurance, which was transferred to the Agency for Health Care Administration in 1994.

Section 2. Repeals s. 402.48, F.S., relating to regulation of health care services pools and an unnecessary cross-reference to this regulation in s. 468.520(4)(f), F.S.

Section 3. Amends s. 455.203(1), F.S., to provide that the department shall not renew a license if a licensee has failed to pay a disciplinary fine.

Sections 4-8. Amend ss. 468.382, 468.383, 468.386, 468.388, and 468.389, F.S., relating to the regulation of auctioneers, and retain requirements relating to bonds and escrow accounts and require a written contract. Make violations of the part unfair or deceptive trade practices under ch. 501, part II, F.S.

Section 9. Repeals all other sections in Part IV, chapter 468, F.S., not listed in Sections 4-8, to eliminate the Board of Auctioneers and licensure requirements.

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Section 10. Amends s. 468.453(2)(e), F.S., making a technical change, explicitly authorizing the requirement for provision of fingerprints by an athlete agent applicant, a requirement that the department had already been enforcing pursuant to implicit, rather than explicit, statutory authority.

Section 11. Repeals s. 468.4563, F.S., relating to continuing education requirements for license renewal for athlete agents.

Section 12. Amends s. 468.525(5), F.S., to provide that employee leasing companies must maintain at all times an accounting net worth of \$50,000 or 5% of a company's liabilities, whichever is greater. Current law requires a company to demonstrate this net worth at initial licensure only.

Section 13. Amends s. 468.526(2), F.S., to delete the requirement that employee leasing companies eligible for employee leasing company group licensure must be corporations.

Section 14. Amends s. 468.5275(1), F.S., to require companies eligible for the out-of-state de minimis exemption from licensure to be licensed in the other state only if required to be licensed by that state's laws.

Section 15. Amends s. 468.531, F.S., to increase the penalty for engaging in the business of employee leasing without a license from a first degree misdemeanor to a third degree felony.

Sections 16-18. Amend ch. 468, part XII, F.S., to transfer by a type two transfer (as defined in s. 20.06[2], F.S.) the regulation of water and wastewater operators to the Department of Environmental Protection.

Section 19. Amends s. 468.609(3) and (7), F.S., to require that after October 1, 1996, no person may engage in the duties of a building code administrator without a standard or limited certificate. In addition, the section is amended to provide that all individuals qualifying for licensure through holding a certificate from a private building official organization must take a Florida Principles and Practices examination to qualify for licensure.

Section 20. Amends s. 468.627, F.S., to repeal continuing education requirements for license renewal for building code administrators and inspectors and to revise the license fee structure.

Sections 21-30. Amend ch. 468, part XIV, F.S., to transfer by a type two transfer the regulation of athletic trainers to the Agency for Health Care Administration.

Section 31. Amends s. 469.005, F.S., to revise the course requirements for licensure as an asbestos consultant or an asbestos contractor.

Section 32. Amends s. 469.013(1)(a), F.S., to revise the course requirements for licensure as an asbestos surveyor, management planner, or project monitor to include a project designer course in addition to the management course currently required.

Sections 33-34. Amend ss. 470.015 and 470.018, F.S., to repeal continuing education requirements for license renewal for funeral directors, embalmers, and direct disposers.

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Sections 35-36. Amend ss. 472.017 and 472.018, F.S., to repeal continuing education requirements for license renewal for land surveyors.

Section 37. Amends s. 474.211, F.S., to repeal continuing education requirements for license renewal for veterinarians.

Section 38. Amends s. 475.15, F.S., to expand the types of business entities that may act as real estate brokers. Current law allows only partnerships and corporations to register as brokers.

Section 39. Amends s. 475.17(2), F.S., to provide that a person who has been licensed in Florida as a real estate salesperson during the last 5 years may not qualify for licensure as a broker unless he has completed the salesperson postlicensure education requirements.

Section 40. Amends s. 475.25(1), F.S., to increase the maximum fine for violations of the real estate licensing law from \$1,000 to \$5,000 to conform to the provisions of s. 455.227, F.S.

Section 41. Reenacts ss. 475.180, 475.22, and 475.422, F.S., to incorporate by reference the amendment to s. 475.25, F.S.

Section 42. Repeals subsection (4) of s. 475.482, F.S., to allow moneys collected from fines for violation of the law to be deposited in the Professional Regulation Trust Fund, rather than the Real Estate Recovery Fund.

Section 43. Creates s. 475.5016, F.S., to authorize the department to inspect brokerage offices for violations of the real estate licensure laws.

Section 44. Creates s. 475.6295, F.S., to authorize the department to inspect appraisal offices for violations of the real estate appraisal licensure laws.

Section 45. Amends 475.615, F.S., to allow the board to set a different renewal fee for current real estate appraiser licensees who are applying for a change of licensure status within 6 months of the biennial renewal date.

Section 46. Amends s. 475.624, F.S., to increase the maximum fine for violations of the appraisal licensing laws from \$1,000 to \$5,000 to conform to the provisions of s. 455.227, F.S.

Section 47. Amends s. 476.144(6), F.S., expand the avenues for qualifying for a restricted barber license and to eliminate the required practical examination.

Section 48. Amends s. 476.154, F.S., to delete language relating to proration of the licensure fee.

Sections 49-60. Amend various sections in chapter 480, F.S., to transfer by a type two transfer the regulation of Massage Therapists to the Agency for Health Care Administration.

Section 61. Amend s. 481.209(2)(e), F.S., to provide an additional nine months for an applicant to make application as having the six years experience that qualify him for being "grandfathered" as an interior designer.

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Section 62. Amends s. 481.303(7), F.S., to provide a definition of "planting design". Planting design is essentially the consultation and preparing of drawings specifying placement of plants and associated soils, when such drawings or plans are done for compensation.

Section 63. Amends s. 481.329(10), F.S., providing for an exemption from licensure requirements as a landscape designer for the activity of "planting design" on residential projects.

Sections 64-73. Amend chapter 484, part II, F.S., to transfer by a type two transfer the regulation of Hearing Aid Specialists to the Agency for Health Care Administration.

Sections 74-75. Amend ss. 489.115 and 489.116, F.S., to repeal continuing education requirements for license renewal for construction contractors.

Section 76. Amends s. 489.119(1), (2), and (3)(a), F.S., to clarify that a sole proprietor qualifying his own sole proprietorship is not required to be certified or registered as a business organization.

Section 77. Amends s. 489.140, F.S., to allow administrative costs associated with operating the Construction Industries Recovery Fund to be paid out of the ½ cent per square foot surcharge used to establish the fund.

Section 78. Repeals subsection (24) of s. 489.505, F.S., to eliminate the definition of a limited burglar alarm system contractor.

Section 79. Amends s. 489.507(3) and (6), F.S., moving rulemaking authority in the area of licensure qualifications from the board and giving it to the department. The board would be advisory in this area.

Section 80. Amends s. 489.511(7) and (8), F.S., requiring the ECLB to delegate application review duties to its staff. The ECLB would provide clear direction to the board staff regarding the criteria for accepting or rejecting an application. The staff would make a recommendation, and the ECLB would have the authority to accept or reject the application, or to remand it for further investigation. Also, provides that no requirement may be made -- in rule or in policy -- that the experience of an applicant must be "supervisory" or "management," unless specifically provided in statute.

Sections 81-82. Amend ss. 489.517 and 489.519, F.S., to repeal continuing education requirements for license renewal for electrical and alarm system contractors.

Section 83. Amends s. 721.20, F.S., to eliminate regulation of timeshare solicitors and hold developers responsible for violations of the chapter by their agents or employees.

Section 84. Authorizes the DBPR to sell the Orlando Regional Service Center and use the proceeds to reimburse the accounts of the various professions within the Professional Regulation Trust Fund.

Section 85. Creates s. 11.63, F.S., establishing the "Regulatory Reform or Repeal Act," providing that specified bodies of professional regulatory statutes shall automatically be repealed on a certain date, unless reenacted, or modified and reenacted; providing for

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review of the regulation prior to the repeal date; providing the standards for reviewing statutory provisions that establish regulation of a profession; providing "that no profession...be subject to regulation by the state unless such regulation is necessary to protect the public health, safety, or welfare from significant or discernible harm or damage and that the police power of the state be exercised only to the extent necessary for that purpose;" providing specific questions which must be considered when determining whether to reestablish a regulatory program; and provides that the Office of Program Policy Analysis and Government Accountability (OPPAGA) will cooperate and share results from their agency program reviews conducted pursuant to s. 11.513, F.S.

Section 86. Creates s. 11.64, F.S., providing the specific repeal dates for each profession under DBPR.

Section 87. Provides legislative intent as to the focus of the review of parts I and II of chapter 489, F.S., as provided in ss. 11.63 and 11.64, F.S. Provides that the focus shall be on regulatory matters excluding the dividing lines between the various professions regarding job scope. Provides legislative intent that if significant reform legislation is enacted during the 1997 legislative session, the repeal date for chapter 489, F.S., shall be moved to October 1, 2003, or later.

Section 88. Provides an effective date of October 1, 1996, unless otherwise provided.

### III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

#### A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

See Fiscal Comments section.

2. Recurring Effects:

See Fiscal Comments section.

3. Long Run Effects Other Than Normal Growth:

None.

4. Total Revenues and Expenditures:

See Fiscal Comments section.

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**B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:**

1. Non-recurring Effects:

None.

2. Recurring Effects:

None.

3. Long Run Effects Other Than Normal Growth:

None.

**C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

1. Direct Private Sector Costs:

None.

2. Direct Private Sector Benefits:

None.

3. Effects on Competition, Private Enterprise and Employment Markets:

None.

**D. FISCAL COMMENTS:**

DBPR indicates that the fiscal impact for various elements of this bill are:

**Real Estate**

Allows moneys collected from fines to go into the Professional Regulation Trust Fund, rather than the Real Estate Recovery Fund. This change will result in an approximately \$330,000 decrease in revenues to the Recovery Fund. This reduction will make it necessary to collect additional money from licensees in accordance with the provisions of s. 475.482(3), F.S., (\$7 biennially from brokers and \$3 biennially from salespersons). It might also be necessary to raise the fee cap in this subsection. The balance in the real estate account of the Professional Regulation Trust Fund will increase by approximately \$330,000. On December 31, 1995, the Real Estate Commission had a balance in the trust fund of a negative \$1.9M.

**Sale of the Orlando Service Center**

Authorizes the sale of the Orlando Service Center. The proceeds from the sale are to be distributed to the accounts of the professions, based on the pro rata share each contributed to the purchase and renovation of the building. This provision will have a fiscal impact on the department for the costs associated with the sale (approximately \$75,000), but the sale

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will hopefully net close to \$2 million for the trust fund and will offset the loss of approximately \$400,000 per year in expenses associated with the building.

**Auctioneers**

The impact of deregulation of auctioneers will be to reduce DBPR's annual budget by \$295,046. Two FTE's are currently devoted to this program. Over the past two fiscal years, the average annual cost of the program was \$241,282. Over the next two fiscal years, the average annual revenue collected by DBPR to support this program is estimated to be \$462,538. At the end of fiscal year 1994-95, this program had a trust fund balance of \$561,168.

**Health Care Service Pools**

The bill "deregulates" health care service pools. The health care services pools program generates approximately \$20,000 in revenue and has expenses which are commingled with the yacht and ship broker section. Five and one-half FTE's are currently shared with Yacht and Ship Brokers.

**Time Share Solicitors**

The bill "deregulates" Time Share Solicitors. The elimination of the timeshare solicitor licensing program would create a loss in revenue of approximately \$100,000 and a reduction in expenses of approximately \$60,000. One FTE is currently devoted to this program.

**Continuing Education**

The impact of the removal of mandatory continuing education for the majority of professions will be to reduce DBPR's budget by \$157,988. Three FTE's are currently devoted to continuing education. Over the past two fiscal years, the average annual cost of the program was \$125,787.

**IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:****A. APPLICABILITY OF THE MANDATES PROVISION:**

This bill does not require counties or municipalities to spend funds or to take an action requiring the expenditures of funds.

**B. REDUCTION OF REVENUE RAISING AUTHORITY:**

This bill does not reduce the authority that municipalities or counties have to raise revenues in the aggregate.

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C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

This bill does not reduce the percentage of a state tax shared with counties or municipalities.

V. COMMENTS:

None.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

The original bill was a "short form" bill proposed to reorganize the DBPR and its authority to regulate the professions and occupations for which it has oversight authority.

An amendment was adopted which comprised of the department's report recommendations. It was further amended to do the following:

- 1) Clarifies provisions relating to timeshare solicitors (who are being deregulated -- as a licensure program -- while certain requirements and civil penalties available for violation of the requirements are established);
- 2) Removes the deregulation of landscape architecture, and provides an exemption for the practice of planting design in a residential setting;
- 3) Creates s. 11.63, F.S., adopting the provisions in CS/HB 1045 establishing a schedule of sunset reviews and repeals for all professions under DBPR (conformed all department proposed sunset dates to that found in the provisions adopted from CS/HB 1045);
- 4) Removes the deregulation of interior designers;
- 5) Removes all provisions relating to talent agent regulation; and
- 6) Removes the deregulation of yacht and shipbrokers.

CS/HB 2407 clarifies a fingerprint requirement for athlete agents; revises (and preserves) continuing education requirements for veterinarians; provides legislative intent for the review of chapter 489; and adopts the provisions of CS/HB 1909 which remove or modify certain authority of the ECLB, giving that authority either to the department or the board staff.

VII. FINAL ACTION:

CS/HB 2407 died in the House Committee on Appropriations. However, several of the issues contained in the bill passed in other bills. The transfer from the Department of Business and Professional Regulation to the Agency for Health Care Administration of athletic trainers (sections 21-30), Massage Therapists (sections 49-60), and Hearing Aid Specialists (sections 64-73), was included in CS/2nd ENG/HB 555 (ch. 96-403, L.O.F.), effective July 1, 1997.